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DATE: October 5, 2005

PAGES: 16 (inclusive)

In re the Application of:

Leland James Wieseuegel)

Serial Number: 09/801,613)

Group: 3625

Docket Number: AUS920010024US1)

Examiner: James Zurita

Filed on: 03/08/2001)

For: "Read-only User Access for Web
Based Auction")

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APPEAL BRIEF (Substitute)***Real Party in Interest per 37 CFR §41.37(c)(1)(i)***

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

Related Appeals and Interferences per 37 CFR §41.37(c)(1)(ii)

This patent application is related to U.S. Patent Application number 09/714,726, docket number AUS9-2000-0736-US, filed on 11/16/2000, which is currently under Appeal and awaiting mailing of the Examiner's Answer to the Appellant's Brief.

Status of Claims per 37 CFR §41.37(c)(1)(iii)

On February 23, 2005, appellant appealed from the final rejections of claims 1 - 23. Independent claims 1, 9, 17, drawn towards a method, a computer-readable medium, and a system according to the invention were amended from their original states on May 17, 2004, and again on Sept. 27, 2004, both of which have been entered. Dependent claims 2 - 8, 10 - 16, and 18 - 23 remain in their originally filed states.

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Status of Amendments after Final Rejections per 37 CFR §41.37(c)(1)(iv)

No amendments to the claims have been submitted or entered after final rejections.

Summary of the Claimed Subject Matter per 37 CFR §41.37(c)(1)(v)

The present invention provides a method (Claim 1), computer-readable medium (Claim 9), and system (Claim 17) for preparing and presenting "entitled offerings" to guest participants in online business-to-business offerings and auctions. The guest participants include guest brokers, bidders, buyers and traders (Figure 2). Our invention employs a profile (pg. 8 lines 5 - 6, pg. 9 lines 15 - 18, Fig. 4, pg. 12 lines 18 - 20, *et seq.*) for each guest broker in a computer-readable record. Each profile contains "entitlement definitions" indicating allowable items for which a guest may receive and view information, but for which the guest's privileges are "read-only" and is to be restricted from placing bids (pg. 12 line 20 to pg. 13 line 3, pg. 16 lines 15 - 21, pg. 22 lines 11 - 15, *et seq.*) Our entitlement definitions are not just user preferences or user contact information. Our entitlement definitions are controlled by a reseller contract between the offeror and the guest auction participant in a manner which prevents a guest auction participant from modifying the entitlement schema, such as a Reseller Master Agreement (pg. 5 lines 18 - 19, pg. 7 lines 7 - 10, *et seq.*). The contract between the offeror and the guest broker is established *before* the guest broker is allowed to view items posted in the auction or offering (pg. 17 lines 7 - 14). These "offerings" or lists of available items in the auction are then prepared and displayed to the guest broker according to the entitlement schema and pre-existing contract (pg. 22 lines 7 - 14).

Preferably, our entitlement definitions include an item category parameter (Claims 2, 10 and 23); our available items list is filtered or reduced by removing items not matching the guest broker's category parameter (Claims 4 and 12) (Fig. 4, pg. 12 lines 8 - 9, *et seq.*). Also according to a preferred embodiment, our entitlement definitions include an guest location parameter (Claims 3, 11, and 22), and our list is filtered or reduced by removing items not matching the guest broker's location parameter (Claims 5 and 13) (Fig. 4, pg. 12 lines 8 - 9, *et seq.*).

Further, the lists are presented to the guest broker using a web browser computer or client system (Claims 6, 14, and 21, Fig. 5, pg. 18 lines 9 - 11), and our a "read-only" indicator for a bid-restricted item is stored in the guest broker's profile (Claims 7 and 15), and only items to

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which the guest broker is entitled to view according to his or her reseller contract are shown in the offerings list (Claims 8 and 16) (Fig. 4, pg. 16 lines 9 - 21).

Also according to a preferred embodiment, our system component which prepares the lists according to the invention is a web server, and particularly a HTTP or secure HTTP server, respectively (Claims 18 - 21, Fig. 5, pg. 14 lines 12 - 18, pg. 17 lines 15 - 17).

Grounds for Rejection For Which Review is Sought per 37 CFR §41.37(c)(1)(vi)

Claims 1 - 23 were finally rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Published Patent Application 2002/0059131 to Goodwin (hereinafter "Goodwin").

Arguments per 37 CFR §41.37(c)(1)(vii)

Rejections under 35 U.S.C. §103(a) over Goodwin

Claims 1, 9, and 17. In our specification, we have described a resellers master agreement ("RMA") which is a contract that is entered into between an offeror of goods or services, such as a computer equipment manufacturer, and a trader who is seeking to purchase those goods or services from the offeror and to resell them to a broker, who in turn purchases the goods or services for an end user (e.g. a large consumer of computer goods) or a retail store (e.g. a large chain of retail computer stores). Thus, a 3-tier arrangement of the parties is established as shown in our Figure 2.

Our invention relates to enabling these various parties to participate in auction-like product offerings from the offeror, and more specifically to allow a guest broker who is considering selling a particular product line to view real, live offering without being allowed to participate by bidding for the offered items. So, in our arrangement, prior to gaining access to the information regarding the offered goods and services, a broker must agree to an RMA which sets forth certain products (e.g. item categories) as being "read only". As such, the broker is not allowed to bid on the items for which information is presented, and no contract to purchase those items by the broker can be consummated because the broker is not allowed to bid and thus the bid could not be a winner in the auction. In order to purchase the items shown as "read only", the broker would then have to amend his or her RMA with the offeror, following which the broker would be allowed the see and bid on items in the offerings.

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To accomplish this functionality, our invention encodes certain details of the pre-existing RMA into an entitlement schema with certain parameters regarding which categories of products or services can be viewed, bid, including an optional geographic location parameter. These parameters are contained in a profile for the guest user, but the guest user is not allowed to modify these parameters or this profile.

In our claims, our term “contract” is intended to mean a binding agreement between the offeror and the guest broker which is unalterable by the guest broker alone, which is commensurate with our disclosure and our objects of our invention.

Goodwin discloses a system for a different business arrangement which also uses an auction style process, but which addresses a different need or problem – enabling storage and access to due diligence information regarding financial products. Goodwin discloses a “seller profile” which can be modified by the “seller”, which has been held to be equivalent to our “broker”. Goodwin’s Table 1 clearly states that the seller in the column “Actor” can supply the information for their “seller profile” (twelfth row of Table 1), and similarly their “buyer” can also supply information for their “buyer’s profile” (fourth row of Table 1). Their system stores this “seller profile”, which may include a restriction on users which may be prohibited from bidding (para. 111).

Appellant has argued that Goodwin’s “seller profile” is not controlled by a pre-existing contract between the offeror and a broker as we have disclosed and claimed. Examiner has agree that Goodwin does not expressly disclose such a controlling previously established reseller contract (page 3, first full paragraph of the Office Action of 11/23/2004), but has stated that Goodwin’s system results in a contract between the two parties, and that such a change to make the contract required before the auction takes place would have been an “obvious matter of choice” in light of Goodwin’s method (pg. 4, first full paragraph).

Goodwin does not disclose the term “contract” anywhere in their disclosure, and no column or line number where this is found has been cited in the final rejections, thus no *prima facie* case of obviousness has been established. We have word-searched the HTML version of Goodwin’s disclosure available on the USPTO’s web site, and there is not a single instance of the word “contract” in the disclosure. We believe this is because Goodwin is directed towards making due diligence information about financial instruments available, and not necessarily about consummating the final contract to purchase or sell such an instrument, commensurate

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with Goodwin's stated objectives.

We have also searched for occurrences of the word "agreement" which appears in the disclosure on several occasions in relationship to types of financial instruments for which due diligence information is stored (e.g. Mortgage Agreement, Environmental Indemnification Agreement, etc., in Table 2), and the status of a particular instrument for which due diligence information is stored (e.g. "Under agreement" vs. "Available" in para. 128).

In Goodwin's paragraph 0134, there is a brief mention of an "Asset Sale Agreement" which is not defined or described in any detail whatsoever. In fact, the term "Asset Sale Agreement" appears nowhere else in Goodwin's disclosure.

Additionally, appellant argues that a proper *prima facie* case of obviousness has not been established because no motivation has been cited in the Goodwin disclosure for making the modification as proposed, but simply it has been stated as a matter of design choice. Goodwin's disclosure is directed towards a difference problem (e.g. archiving and making available due diligence information) than the appellant's invention (e.g. conducting business-to-business offerings controlled by a RMA). Goodwin does not mention or suggest use of their system for such business-to-business offerings controlled by an RMA. Because Goodwin fails to recognize the problem solved by appellant's invention, there can be no motivation in the Goodwin reference to make the changes as proposed by the examiner.

As such, a proper *prima facie* case of obviousness has not been established for failure to interpret appellant's claims in light of the appellant's disclosure and for failure to find motivation in the cited art. For these reasons, Appellant requests allowance of Claims 1, 9 and 17.

Claims 2 - 5, 10 - 13, and 22 - 23. In rejecting Claims 2 - 5, 10 - 13, and 22 - 23, it has been held that Goodwin teaches their "seller profile" as having an item category parameter and a guest location parameter. Further, it has been held that Goodwin's "search parameters" teach appellant's claim element, step or limitation of removing items from the full list of available items for which a match of the category or location parameter is not found.

Goodwin's disclosure clearly states that the buyer who is performing the search for a financial instrument may provide a parameter regarding the "type" of product sought (para. 0144), in which case appellant's RMA would not be the controlling factor, the bidder himself would be the controlling factor. Thus, Goodwin's disclosure fails to teach a category parameter

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in a profile which is controlled by a pre-existing contract.

In Goodwin's disclosure, the seller is allowed to provide a "location" input using a form sent by Goodwin's system to the seller (para. 0112). Likewise, appellant's RMA would not be the controlling factor for specifying a location parameter, but the seller himself would be the controlling factor. Thus, Goodwin's disclosure fails to teach a location parameter in a profile which is controlled by a pre-existing contract.

Additionally, Claims 2 - 5, 10 - 13, and 22 - 23 recite steps, elements and limitations as claimed in Claims 1, 9 and 17 which are not taught or suggested by Goodwin as discussed in the foregoing paragraphs. For these reasons, allowance of Claims 2 - 5, 10 - 13, and 22 - 23 is requested.

Claims 6 - 8, 14 - 16, and 18 - 21. We have described and claimed our invention as utilizing a web browser for the client device to receive and view offering lists, and we have described and claimed using a secure or non-secure HTTP server for preparing such offering lists, according to and controlled by a pre-existing contract in the manner claimed in Claims 1, 9, and 17. Claims 6 - 8, 14 - 16, and 18 - 21 each depend from Claim 1, 9 or 17.

As such, Claims 6 - 8, 14 - 16, and 18 - 21 recite steps, elements and limitations as claimed in Claims 1, 9 and 17 which are not taught or suggested by Goodwin as discussed in the foregoing paragraphs. For these reasons, allowance of Claims 6 - 8, 14 - 16, and 18 - 21 is requested.

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Summary of Arguments

For the foregoing reasons, it is submitted that the rejections of Claims 1 - 23 were erroneous, and allowance of these claims is respectfully requested.

Respectfully Submitted,

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Claims Appendix*per 37 CFR §41.37(c)(1)(viii)***Clean Form of Amended Claims****Claim 1 (previously amended)**

A method for preparing and presenting entitled offerings to guest participants in online offerings a auctions, said guest participants including guest brokers, bidders, buyers and traders, said method comprising the steps of:

providing a profile for each guest in a computer-readable record, each profile containing one or more entitlement definitions indicating allowable items which a guest may receive information but for which is "read-only" and is to be restricted from placing bids, said entitlement definitions being determined by and controlled by a previously-established reseller contract between an offeror and a guest auction participant in a manner which prevents a guest auction participant from modifying the entitlement schema;

preparing one or more entitled offerings through filtering an available items list according to said profiles such that said prepared entitled offerings include only offerings for one or more items to which a guest is allowed offers as defined by the guest's entitlement definitions; and

presenting via a computer user interface said entitled offerings to one or more guests such that each guest may review his or her entitled offerings.

Claim 2 (original):

The method as set forth in Claim 1 wherein said step of providing a profile with entitlement definitions comprises providing an item category parameter within said entitlement definitions.

Claim 3 (original):

The method as set forth in Claim 1 wherein said step of providing a profile with entitlement definitions comprises providing a guest location parameter within said entitlement definitions.

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Claim 4 (original):

The method as set forth in Claim 2 wherein said step of preparing one or more entitled offerings comprises removing items from said available items list which are unmatched by a category parameter within a guest's entitlement definition to produce a minimized list of items for which a guest is entitled to receive offerings.

Claim 5 (original):

The method as set forth in Claim 3 wherein said step of preparing one or more entitled offers comprises removing items from said available items list which are unmatched by a guest's location parameter within an entitlement definition to produce a minimized list of items for which a guest is entitled to receive offerings.

Claim 6 (original):

The method as set forth in Claim 1 wherein said step of presenting via a computer user interface said entitled offerings to one or more guests comprises presenting said entitled offerings via a web browser user interface.

Claim 7 (original):

The method as set forth in Claim 1 further comprising disabling and restricting bid attempts from said guest for items which are indicated as "read-only" in the guest's profile.

Claim 8 (original):

The method as set forth in Claim 1 further comprising enabling bid attempts from said guest for items which are indicated as "entitled" in the guest's profile.

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Claim 9 (previously amended):

A computer-readable medium containing computer executable program code for preparing and presenting entitled offerings to guests of online offerings and auctions, said guests including bidders, buyers, brokers and traders, said computer program code causing said computer network server to perform the steps of:

accessing a profile for each guest in a computer-readable record, each profile containing one or more entitlement definitions indicating allowable items for which a guest may receive offerings which are "read-only" and for which each guest is to be restricted from bidding, said entitlement definitions being determined by and controlled by a previously-established reseller contract between an offeror and a guest auction participant in a manner which prevents a guest auction participant from modifying the entitlement schema;

preparing one or more entitled offerings through filtering an available items list against said profile such that resulting entitled offerings include only one or more items for which a guest is allowed to receive offerings as defined by the guest's entitlement definitions; and

presenting via a computer user interface said entitled offerings to one or more guests such that each guest may review his or her entitled offerings.

Claim 10 (original):

The computer-readable medium as set forth in Claim 9 wherein said program code for providing a profile with entitlement definitions comprises computer program code for providing an item category parameter within said entitlement definitions.

Claim 11 (original):

The computer-readable medium as set forth in Claim 9 wherein said program code for providing a profile with entitlement definitions comprises program code for providing a location parameter within said entitlement definitions.

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Claim 12 (original):

The computer-readable medium as set forth in Claim 10 wherein said program code for preparing one or more entitled offerings comprises program code for removing items from said available items list which are unmatched by a category parameter within a guest's entitlement definition to produce a minimized list of items for which a broker is entitled to receive offerings.

Claim 13 (original):

The computer-readable medium as set forth in Claim 11 wherein said program code for preparing one or more entitled offerings comprises program code for removing items from said available items list which are unmatched by a location parameter within a broker entitlement definition to produce a minimized list of items for which a guest is entitled to receive offerings.

Claim 14 (original):

The computer-readable medium as set forth in Claim 9 wherein said program code for presenting via a computer user interface said entitled offerings to one or more prospective brokers comprises program code for presenting said entitled offerings via a web browser user interface.

Claim 15 (original):

The computer-readable medium as set forth in Claim 9 further comprising program code for disabling and restricting bid attempts from said guest for items which are indicated as "read-only" in the guest's profile.

Claim 16 (original):

The computer-readable medium as set forth in Claim 9 further comprising program code for enabling bid attempts from said guest for items which are indicated as "entitled" in the guest's profile.

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Claim 17 (previously amended)

An offering system in a computer network for preparing and presenting entitled offerings to guests of online offer and auction systems, said guests including brokers, buyers, bidders and traders, said computer network enabling communications between said online offer system and guest consoles, said offering system comprising:

a database containing entitled sales offerings, said database accessible and queriable by network application servers;

an entitled offering preparation server for preparing entitled offerings through filtering lists of available items against guest entitlement parameters to produce entitled offerings including one or more items to which a guest is entitled to receive information and for which a guest is restricted to bid, said entitlement parameters being determined by and controlled by a previously-established reseller contract between an offeror and a guest auction participant in a manner which prevents a guest auction participant from modifying the entitlement schema, and for storing entitled sales offerings in said database; and

a network application server for providing sales offerings to guest console computers.

Claim 18 (original):

The offering system as set forth in Claim 17 wherein said network application server is an Internet server.

Claim 19 (original):

The offering system as set forth in Claim 17 wherein said network application server is a Hyper Text Transfer Protocol (HTTP) server.

Claim 20 (original):

The offering system as set forth in Claim 17 wherein said network application server is a secure Hyper Text Transfer Protocol (HTTPS) server.

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The offering system as set forth in Claim 17 wherein said network application server is adapted for communications with guest console computers which are web browser devices.

Claim 22 (original):

The offering system as set forth in Claim 17 wherein entitled sales offering preparation server is adapted to filter lists of available items by guest entitlement parameters including a location parameter.

Claim 23 (original):

The offering system as set forth in Claim 17 wherein entitled sales offering preparation server is adapted to filter lists of available items by guest entitlement parameters including an item category parameter.

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Evidence Appendix
per 37 CFR §41.37(c)(1)(ix)

No evidence has been submitted by applicant or examiner pursuant to 37 CFR §§1.130, 1.131, or 1.132.

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No decisions have been rendered by a court or the Board in the related proceedings as identified under 37 CFR §41.37(c)(1)(ii).